

AMENDED IN ASSEMBLY AUGUST 25, 2011

**SENATE BILL**

**No. 791**

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**Introduced by Senator Steinberg**

February 18, 2011

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~~An act to amend Section 14536 of the Government Code, relating to transportation. An act to add Chapter 2 (commencing with Section 55830) to Part 3 of Division 2 of Title 5 of the Government Code, relating to transportation.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 791, as amended, Steinberg. ~~California Transportation Commission: annual report. Regional congestion reduction charge.~~

*Existing law provides various funding sources for transportation programs and capital improvement projects. Existing law provides for designation of transportation planning agencies throughout the state with various transportation planning and programming responsibilities, including preparation of a regional transportation plan. Certain of these agencies are also designated as metropolitan planning organizations under federal law.*

*This bill would authorize a metropolitan planning organization, subject to majority voter approval, to impose, for up to 30 years, a regional transportation congestion reduction charge on purchasers of motor vehicle fuel in all or part of its jurisdiction, which would be collected by the fuel retailer or wholesaler and transmitted to the State Board of Equalization. The bill would define motor vehicle fuel for these purposes to include gasoline and diesel. A corresponding vehicle registration charge would be imposed on electric vehicles licensed to be driven on public roads, which would be collected by the Department of Motor Vehicles. Prior to adopting a regional congestion reduction*

*charge, the metropolitan planning organization would be required to make certain determinations, including that the transportation demand reduction projects funded by the charge would directly and specifically benefit motorists within the region by reducing vehicle congestion so as to increase overall mobility for motorists who are paying the charge. The bill would impose various other requirements.*

*The bill would provide for revenues from the regional transportation congestion reduction charge to be transferred by the State Board of Equalization or the Department of Motor Vehicles, as applicable, to the appropriate metropolitan planning organization. The bill would authorize use of the revenues for certain transportation projects and programs that have been identified in the regional transportation plan, as specified. The bill would require the board of supervisors in a county in the jurisdiction of the metropolitan planning organization where the charge is to be imposed, upon request of the organization, to submit the proposed charge to the voters, and would require the organization to reimburse the associated election costs. In certain counties, the charge would be imposed by a county transportation commission rather than the metropolitan planning organization.*

~~Existing law requires the California Transportation Commission to adopt an annual report for submission to the Legislature containing, among other things, a summary of the commission's prior-year decisions in allocating transportation capital outlay funds and an identification of timely and relevant transportation issues facing the state. Existing law, for the reports to be submitted between 2001 and 2008, requires a summary and discussion of certain loans and transfers of transportation revenues and the cashflow and project delivery impact of those loans and transfers.~~

~~This bill would delete the provisions relating to the loan and transfer summary and discussion that was to be included in the reports submitted between 2001 and 2008.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. The Legislature finds and declares all of the*
- 2     *following:*
- 3     *(a) Section 65080 of the Government Code requires each*
- 4     *transportation planning agency designated under Section 29532*

1 or 29532.1 of that code to prepare and adopt a regional  
2 transportation plan directed at achieving a coordinated and  
3 balanced regional transportation system, including, but not limited  
4 to, mass transportation, highway, railroad, maritime, bicycle,  
5 pedestrian, goods movement, and aviation facilities and services.

6 (b) Federal law also requires metropolitan planning  
7 organizations to prepare regional transportation plans that  
8 consider the need to relieve congestion and to prevent congestion  
9 from occurring and to consider congestion management strategies  
10 or actions that improve the mobility of people and goods (23 C.F.R.  
11 450.316).

12 (c) Achieving increased mobility within California's  
13 metropolitan regions is essential for their economic growth and  
14 environmental quality. Free movement of vehicles, goods, and  
15 services within a region is a key goal of the regional transportation  
16 plan.

17 (d) In attempting to achieve a coordinated and balanced  
18 regional transportation system that will achieve the greatest  
19 mobility for individuals and businesses within the region, the  
20 transportation planning agency must consider projects, taking  
21 into account land use and other effects, including induced demand  
22 and induced growth, that reduce vehicle congestion by increasing  
23 roadway and freeway capacity, as well as projects that reduce  
24 vehicle congestion by decreasing demand for roadway and freeway  
25 use.

26 (e) In many of California's urbanized areas, it is not practical  
27 to increase roadway or freeway capacity because of land or  
28 environmental constraints. In other parts of the state, the benefits  
29 of increased roadway and freeway capacity can be short lived  
30 because often land use changes occur that result in additional  
31 driving that absorbs the new capacity. In those areas, projects to  
32 reduce demand for roadway and freeway use, by providing  
33 alternate means of transportation, may be the most practical way  
34 to achieve reduced vehicle congestion.

35 (f) At the November 2, 2010, statewide general election, the  
36 voters of California approved Proposition 26, which amended  
37 Section 3 of Article XIII A and Section 1 of Article XIII C of the  
38 California Constitution. Section 3 of Article XIII A of the California  
39 Constitution requires a two-thirds vote of the Legislature for any  
40 change in a state statute that results in any taxpayer paying a

1 *higher tax. Exceptions to the definition of “tax” were also adopted.*  
2 *Section 1 of Article XIII C of the California Constitution adopts*  
3 *new definitions, including a new definition of “special tax.”*  
4 *Exceptions to the definition of “special tax” were also adopted.*

5 *(g) An exception both to the definition of “tax” in Section 3 of*  
6 *Article XIII A of the California Constitution, and to the definition*  
7 *of “special tax” in Section 1 of Article XIII C of the California*  
8 *Constitution, is a charge imposed for a specific benefit conferred*  
9 *or privilege granted directly to the payor that is not provided to*  
10 *those not charged, and which does not exceed the reasonable costs*  
11 *to the state or local government of conferring the benefit or*  
12 *granting the privilege.*

13 *(h) Proposition 26 also imposes a requirement on any charge*  
14 *enacted without a two-thirds vote that the government “bears the*  
15 *burden of proving by a preponderance of the evidence that a levy,*  
16 *charge, or other exaction is not a tax, that the amount is no more*  
17 *than necessary to cover the reasonable costs of the governmental*  
18 *activity, and that the manner in which those costs are allocated to*  
19 *a payor bear a fair or reasonable relationship to the payor’s*  
20 *burdens on, or benefits received from, the governmental activity”*  
21 *(subdivision (d) of Section 3 of Article XIII A of the California*  
22 *Constitution; Section 1 of Article XIII C of the California*  
23 *Constitution).*

24 *(i) The requirements that the amount is not more than necessary*  
25 *to cover the reasonable costs of the governmental activity and that*  
26 *the manner in which those costs are allocated to a payor bear a*  
27 *fair or reasonable relationship to the payor’s burden on or benefits*  
28 *received from the governmental activity restate language from the*  
29 *Sinclair Paint Co. v. State Bd. of Equalization (1997) 15 Cal.4th*  
30 *866, line of cases (see also California Farm Bureau v. State Water*  
31 *Resources Control Board (2011) 51 Cal.4th 421, 437-439).*

32 *(j) Under this standard, a regulatory fee does not become a tax*  
33 *simply because the fee may be disproportionate to the service*  
34 *rendered to individual payors. The question of proportionality is*  
35 *not measured on an individual basis. Rather, it is measured*  
36 *collectively, considering all rate payors (California Assn. of*  
37 *Professional Scientists v. Department of Fish & Game (2000) 79*  
38 *Cal.App.4th 935, 948). Thus, permissible fees must be related to*  
39 *the overall cost of the government regulation. They need not be*  
40 *finely calibrated to the precise benefit each individual fee payor*

1 might derive (*California Farm Bureau v. State Water Resources*  
2 *Control Board, supra, at p. 438*).

3 (k) Freeway and roadway users receive a specific benefit from  
4 programs and projects that reduce vehicle congestion within a  
5 region and, therefore, it is appropriate for transportation planning  
6 agencies that are federally designated metropolitan planning  
7 organizations to impose regional charges on such freeway and  
8 roadway users that do not exceed the reasonable cost of reducing  
9 vehicle congestion. Congestion reduction is a specific benefit  
10 provided to the users of freeways and roadways that is particular  
11 and distinct to those users over and above general benefits  
12 provided to the public at large. The Legislature also finds that  
13 regional vehicle charges are an appropriate method to charge  
14 freeway and roadway users for receiving the specific benefit of  
15 reduced congestion, and that individuals and businesses that do  
16 not pay regional vehicle charges will not receive the specific benefit  
17 of reduced vehicle congestion.

18 (l) Freeway and roadway users also receive a specific benefit  
19 from funding for maintenance and repair of those facilities, a  
20 specific benefit to those users that is not enjoyed by the general  
21 public.

22 SEC. 2. Chapter 2 (commencing with Section 55830) is added  
23 to Part 3 of Division 2 of Title 5 of the Government Code, to read:  
24

25 CHAPTER 2. REGIONAL CONGESTION REDUCTION CHARGE  
26

27 55830. (a) Subject to the approval of the voters pursuant to  
28 subdivision (f), a metropolitan planning organization designated  
29 pursuant to Section 134 of Title 23 of the United States Code may  
30 impose a regional congestion reduction charge in all or part of  
31 its jurisdiction pursuant to this section. The charge shall become  
32 operative on the first day of the first calendar quarter commencing  
33 more than 90 days after voter approval.

34 (b) A regional congestion reduction charge imposed pursuant  
35 to this chapter must satisfy all of the following:

36 (1) (A) The transportation projects and programs funded by  
37 the charge would directly and specifically benefit motorists within  
38 the region by reducing vehicle congestion and by providing capital  
39 improvements for maintenance, safety, and rehabilitation so as to

1 *increase overall mobility for motorists within the region who are*  
2 *paying the charge.*

3 *(B) The metropolitan planning organization shall consider both*  
4 *increased ridership on transit services as well as changes in land*  
5 *use patterns during the planning horizon of the regional*  
6 *transportation plan in determining the congestion relief that would*  
7 *result from the transportation demand reduction projects.*

8 *(C) The metropolitan planning organization shall use travel*  
9 *demand models consistent with Section 14522.1 and guidelines*  
10 *adopted by the California Transportation Commission for*  
11 *transportation demand models in making this determination.*

12 *(D) For purposes of this subdivision, “vehicle congestion”*  
13 *means peak period travel speeds on regional freeways,*  
14 *thoroughfares, major and minor arterials, and major connectors*  
15 *that are less than 60 percent of the free flow speeds.*

16 *(2) The specific benefits of reduced vehicle congestion are not*  
17 *provided to those not charged.*

18 *(3) The amount of the charge does not exceed the reasonable*  
19 *costs of providing the congestion reduction benefits identified in*  
20 *the regional transportation plan.*

21 *(4) The manner in which the charge is allocated to a payor*  
22 *bears a fair or reasonable relationship to the payor’s congestion*  
23 *relief benefit on regional freeways, thoroughfares, major and*  
24 *minor arterials, and major connectors.*

25 *(5) The metropolitan planning organization shall adopt any*  
26 *additional findings necessary to establish that the charge satisfies*  
27 *the requirements of paragraph (1) of subdivision (e) of Section 1*  
28 *of Article XIII C of the California Constitution.*

29 *(c) The charge shall be in addition to any other levies that the*  
30 *metropolitan planning organization is authorized to impose.*

31 *(1) The charge may be implemented for a period not to exceed*  
32 *30 years on all purchasers of motor vehicle fuels sold in all or*  
33 *part of the jurisdiction of the metropolitan planning organization.*  
34 *The rate of the charge shall be established by the metropolitan*  
35 *planning organization on a per gallon basis.*

36 *(2) With respect to electric vehicles that are licensed to be driven*  
37 *on public roads and that do not utilize motor vehicle fuel, the*  
38 *charge may be imposed on the vehicle registration for vehicles*  
39 *with a registration address in that part of the region where the*  
40 *charge on motor vehicle fuel is imposed. The charge shall be for*

1 *the same period of time as the charge on motor vehicle fuel. The*  
 2 *surcharge shall be collected by the Department of Motor Vehicles*  
 3 *and, after deducting the department's administrative costs, the net*  
 4 *revenues shall be transferred quarterly to the metropolitan*  
 5 *planning organization.*

6 *(3) As used in this section, motor vehicle fuel includes, but is*  
 7 *not limited to, gasoline and diesel fuel, which shall have the same*  
 8 *meanings set forth in Sections 7316 and 60022, respectively, of*  
 9 *the Revenue and Taxation Code.*

10 *(d) (1) Revenues from the charge may be expended for (A)*  
 11 *transit capital, operations, and maintenance costs, (B) bicycle and*  
 12 *pedestrian programs and projects, (C) programs and projects that*  
 13 *would demonstrably reduce the region's rate of growth from 2005*  
 14 *levels in vehicle miles traveled by single-occupant vehicles, (D)*  
 15 *conversion of high-occupancy vehicle lanes to high occupancy toll*  
 16 *lanes or other variably tolled express lanes, (E) capital*  
 17 *improvements relative to maintenance, safety, and rehabilitation*  
 18 *of state highways and bridges as described in subdivision (a) of*  
 19 *Section 14526.5 and equivalent projects on local streets and roads,*  
 20 *and (F) related administrative costs. A metropolitan planning*  
 21 *organization that includes a regional congestion reduction charge*  
 22 *in its regional transportation plan shall identify the programs and*  
 23 *projects that would be funded by the charge in the financial element*  
 24 *of the regional transportation plan. The financial element shall*  
 25 *also identify the eligible transit operators and other recipients and*  
 26 *the amount of funds that would be needed from all sources,*  
 27 *including the regional congestion reduction charge, for each year*  
 28 *of the programs through the planning horizon of the regional*  
 29 *transportation plan.*

30 *(2) A charge authorized by this section shall provide sufficient*  
 31 *funding, together with other funding sources realistically projected*  
 32 *to be available, to complete each project or program, or to operate*  
 33 *and maintain each program for the duration of the project or*  
 34 *program as identified in the regional transportation plan.*

35 *(e) (1) Following the adoption by the metropolitan planning*  
 36 *organization of a regional transportation plan, or an amendment*  
 37 *to a regional transportation plan, that provides for a charge*  
 38 *pursuant to this section, the board of supervisors of each county*  
 39 *and city and county in the jurisdiction of the metropolitan planning*  
 40 *organization where the charge is to be imposed shall, upon the*

1 request of the metropolitan planning organization, submit to the  
2 voters at a local election consolidated with a statewide primary  
3 or general election specified by the metropolitan planning  
4 organization, a measure, adopted by the organization, authorizing  
5 the organization to impose the charge within all or part of the  
6 region consistent with subdivision (c).

7 (2) The metropolitan planning organization shall reimburse  
8 each county or city and county in the affected part of the region  
9 for the cost of submitting the measure to the voters. These costs  
10 shall be reimbursed from revenues derived from the charge if the  
11 measure is approved by the voters or, if the measure is not  
12 approved, from any funds of the metropolitan planning  
13 organization that may be lawfully used for that purpose.

14 (f) (1) Upon approval of the measure by a majority of the voters  
15 voting at an election within the region or the affected part of the  
16 region where the charge is to be imposed, the metropolitan  
17 planning organization may impose the charge. The charge shall  
18 be imposed on the purchaser of motor vehicle fuel at the point of  
19 retail or wholesale sale in each county or city and county within  
20 the region where the charge is imposed, and shall be collected  
21 from the purchaser by the retailer or wholesaler and transmitted  
22 to the State Board of Equalization. The measure shall provide for  
23 refund, by the board, of charges paid for motor vehicle fuel that  
24 is not used in a vehicle on public roads.

25 (2) The motor vehicle fuel charge required to be collected by  
26 the retailer or wholesaler, and any amount unreturned to the  
27 customer which is not the charge but was collected from the  
28 customer under the representation that it was the charge, constitute  
29 debts owed by the retailer or the wholesaler to the state.

30 (3) The motor vehicle fuel charges imposed by this section are  
31 due and payable quarterly on or before the last day of the month  
32 next succeeding each calendar quarter. The payment shall be  
33 accompanied by a return in the form prescribed by the State Board  
34 of Equalization.

35 (g) (1) The metropolitan planning organization shall contract  
36 with the State Board of Equalization for the administration of the  
37 motor vehicle fuel charge imposed under this section, and the  
38 board shall be reimbursed for its actual cost in the administration  
39 of the charge, including administration of refunds, and for its



1 actual cost of preparation to administer the charge based upon  
2 an independent audit.

3 (2) The State Board of Equalization shall collect the motor  
4 vehicle fuel charges pursuant to the Fee Collection Procedures  
5 Law (Part 30 (commencing with Section 55001) of Division 2 of  
6 the Revenue and Taxation Code).

7 (3) After deducting its cost of administering the motor vehicle  
8 fuel charge, the State Board of Equalization shall periodically  
9 transmit the net revenues, less refunds, to the metropolitan  
10 planning organization as promptly as possible. Transmittal of  
11 those revenues shall be made at least twice in each calendar  
12 quarter.

13 (h) The net revenues of the motor vehicle fuel and electric  
14 vehicle registration charge shall be deposited into a Regional  
15 Congestion Reduction Fund, to be created and administered by  
16 the metropolitan planning organization, and shall be expended in  
17 accordance with this section.

18 (i) (1) In an area where a charge has been approved by the  
19 voters, the metropolitan planning organization shall appoint an  
20 independent taxpayers' oversight committee to audit and oversee  
21 the programs and projects funded by the charge to ensure that  
22 expenditures are consistent with this chapter and with the measure  
23 submitted to the voters.

24 (2) The committee shall be comprised of three persons, each of  
25 whom shall be a retired federal or state judge. Committee members  
26 shall be selected in a public meeting by the board of the  
27 metropolitan planning organization. No person currently serving  
28 as an elected or appointed city, county, special district, state, or  
29 federal public officeholder shall be eligible to serve as a member  
30 of the committee. The committee shall select no fewer than six  
31 taxpayers representing a fair cross section of the public to serve  
32 on an advisory committee.

33 (j) (1) The metropolitan planning organization may issue bonds  
34 backed solely by revenues from the charge authorized by this  
35 section. Revenues from the charge may be pledged for payment of  
36 debt service on those bonds.

37 (2) For purposes of this section, "bonds" means indebtedness  
38 and securities of any kind or class, including bonds, notes, bond  
39 anticipation notes, and commercial paper.

1     (3) *The metropolitan planning organization may issue bonds*  
2 *payable from the revenues from the charge authorized by this*  
3 *section at any time or from time to time. The bonds may be secured*  
4 *by a pledge of those revenues. The metropolitan planning*  
5 *organization may issue bonds to refund, purchase, or otherwise*  
6 *acquire bonds on terms and conditions as it shall approve.*

7     (4) *The bonds may be sold at public or private sale in the forms*  
8 *and on such terms and conditions as the metropolitan planning*  
9 *organization shall approve. The metropolitan planning*  
10 *organization may pledge all or any part of the revenues from the*  
11 *charge to secure any repayment or reimbursement obligations of*  
12 *the metropolitan planning organization to any provider of*  
13 *insurance or a guarantee of liquidity or credit facility entered into*  
14 *to provide for the payment of the bonds. The metropolitan planning*  
15 *organization may employ and compensate bond counsel, financial*  
16 *consultants, and other advisers determined necessary by it in*  
17 *connection with the issuance and sale of the bonds.*

18     (5) *Bonds issued under this chapter shall not be a debt or*  
19 *liability of any political subdivision of this state, or a pledge of*  
20 *the full faith and credit of the state or of any political subdivision,*  
21 *but shall be payable solely from the funds provided in this chapter.*

22     (6) *Bonds issued by the metropolitan planning organization are*  
23 *legal investments for all trust funds, the funds of all insurance*  
24 *companies, banks, trust companies, executors, administrators,*  
25 *trustees, and other fiduciaries. The bonds are securities that may*  
26 *legally be deposited with, and received by, any state or municipal*  
27 *officer or agency or political subdivision of the state for any*  
28 *purpose for which the deposit of bonds or obligations of the state*  
29 *is now, or may hereafter be, authorized by law, including deposits*  
30 *to secure public funds.*

31     (7) *Interest earned on any bonds issued under this chapter shall*  
32 *at all times be free from state personal income tax and corporate*  
33 *income tax.*

34     (8) *The state hereby pledges to and agrees with the holders of*  
35 *bonds issued by the metropolitan planning organization that the*  
36 *state will not limit, alter, or restrict the rights hereby vested in the*  
37 *metropolitan planning organization to fulfill each pledge of*  
38 *revenues and any other terms of any agreement made with or for*  
39 *the benefit of the holders of bonds or in any way impair the rights*  
40 *or remedies of the holders of bonds.*

1     (k) Notwithstanding any other provision of this section, in the  
2     region served by the multicounty transportation planning agency  
3     described in Section 130004 of the Public Utilities Code, a county  
4     transportation commission may impose the charge within the  
5     county of its jurisdiction if approved by a majority of the voters  
6     in that county. The requirements of subdivision (b) shall apply to  
7     the county within the region specified in this subdivision. In this  
8     case, the county transportation commission, rather than the  
9     metropolitan planning organization, shall exercise all of the powers  
10    under this section relative to imposition of the charge.

11    (l) (1) The requirement for voter approval pursuant to  
12    subdivision (f) is a requirement for a charge imposed specifically  
13    pursuant to this section and is not a requirement of the California  
14    Constitution.

15    (2) The provisions of this chapter shall not limit the rights of  
16    local governments to impose any fee or charge otherwise permitted  
17    under the California Constitution.

18    ~~SECTION 1. Section 14536 of the Government Code is~~  
19    ~~amended to read:~~

20    ~~14536. (a) The annual report shall include an explanation and~~  
21    ~~summary of major policies and decisions adopted by the~~  
22    ~~commission during the previously completed state and federal~~  
23    ~~fiscal year, with an explanation of any changes in policy associated~~  
24    ~~with the performance of its duties and responsibilities over the~~  
25    ~~past year.~~

26    ~~(b) The annual report may also include a discussion of any~~  
27    ~~significant upcoming transportation issues anticipated to be of~~  
28    ~~concern to the public and the Legislature.~~